

Atty. Docket No. 2541-1002

PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Arturo CONTINI et al.

Confirmation No. 2457

Serial No. 09/897,986

GROUP 1761

Filed July 5, 2001

Examiner Nina Nmn Bhat

BALSAMIC SAUCE FOR ALIMENTARY USE,  
WITH A BASIS OF BALSAMIC VINEGAR  
OF MODENA

REPLY TO THE THIRD PARTY PROTEST

Commissioner for Patents

Washington, D.C. 20231

Sir:

The Official Action of February 3, 2003 forwarded a copy of a Third Party Protest. This responds to the Official Action and the Third Party Protest.

Claims 10-17 in the present application are directed to a sauce that contains a thickening agent, a sugar, and at least 40% balsamic vinegar of Modena (these claims were added in the amendment filed December 9, 2002). The Third Party Protest provides copies of labels for sauces that include balsamic vinegar of Modena and other ingredients. However, not one of these labels indicates that the sauce is comprised of at least 40% balsamic vinegar of Modena. As noted in the December 9 response, balsamic vinegar of Modena has an intense taste and is used sparingly. Indeed, the applicants are of the opinion that the sauces cited in the protest are merely aromatized with the

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balsamic vinegar. There is no evidence in the Third Party Protest that would lead one of skill in the art to make a sauce that is comprised of a thickening agent, a sugar, and at least 40% balsamic vinegar of Modena.

Paragraph 8 of the Third Party Protest alleges "balsamic sauce that contains 40% balsamic vinegar, sugars, modified starch and xanthan gum is not unique." This statement is not relevant to the claims herein because the claims are directed to a sauce that contains at least 40% balsamic vinegar of Modena, not a sauce in which the ingredients named by the third party protestor are 40% of the sauce. Further, there is no support for this allegation and no weight should be given to an unsupported allegation.

Further, the present application was filed on July 5, 2001 and claims priority from the Italian application filed December 27, 2000. The material in the Third Party Protest is undated (except expiration dates that are not relevant) and thus the third party protestor has not established that the material is prior art.

The Official Action indicates (paragraph 6) that some of the compositions offered in the Third Party Protest may be "readable on applicant's invention." This statement is not understood since none of the compositions has been shown to contain a thickening agent, a sugar, and at least 40% balsamic vinegar of Modena. The Official Action also does not address the

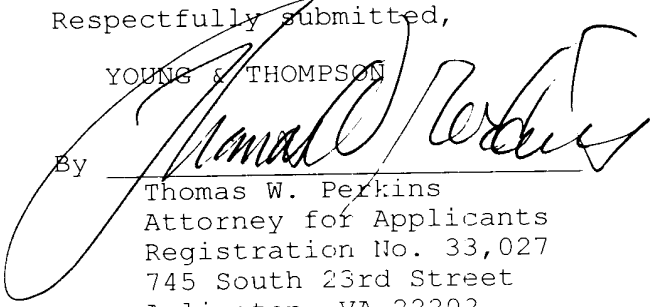
dates of the material, and it cannot be presumed from the information available that the material is prior art. Accordingly, it is believed that claims 10-17 are patentable over the material cited in the Third Party Protest.

Allowance of claims 10-17 in a further and favorable communication is respectfully requested.

Respectfully submitted,

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February 26, 2003

### Table of Exhibits

Labels for Balsamic Glaze .....	Exhibit 1
Currently sold in the USA for products similar to the balsamic sauce which is the subject of the patent application.	
Labels for dressings .....	Exhibit 2
Samples of dressings with the same ingredients as listed in the claims of the patent application.	
Promotion material .....	Exhibit 3
Colavita sell sheet for the balsamic glaze used by the sales people to promote the product.	
Bibliography list .....	Exhibit 4
List of cookbooks which use the balsamic vinegar products.	
Websites .....	Exhibit 5
Websites which educate and advertise the balsamic vinegar products already in commerce.	